

**STAFF REPORT
C104**

A 76

08/23/18
PRC 7242.9
W 20725.204
W. Hall
B. Johnson
K. Forbes

S 36

REQUEST AUTHORITY FOR THE EXECUTIVE OFFICER TO SOLICIT PROPOSALS FOR CONSULTANT SERVICES, NEGOTIATE A FAIR AND REASONABLE PRICE, AND AWARD AND EXECUTE A CONTRACT FOR MAINTENANCE DREDGING OF THE BATIQUITOS LAGOON; ENTER INTO AN INTERAGENCY AGREEMENT TO RECEIVE FUNDS AND RECOVER STAFF COSTS FOR ADMINISTERING THE CONTRACT; AND, AS TRUSTEE OF THE KAPILOFF LAND BANK FUND, ACCEPT MITIGATION FUNDS FOR THE PURPOSE OF CONDUCTING MAINTENANCE DREDGING OF BATIQUITOS LAGOON IN SAN DIEGO COUNTY

PARTIES:

California State Lands Commission (in its independent capacity and as Trustee of the Kapiloff Land Bank Fund)

California Department of Fish and Wildlife

BACKGROUND:

At its September 23, 1987 meeting, the Commission authorized the Executive Officer to enter into a Habitat Restoration Agreement (Agreement) with the City of Los Angeles, the City of Carlsbad, the California Department of Fish and Wildlife (CDFW), the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service (collectively, the Parties) to enhance marine habitat in Batiquitos Lagoon to compensate for marine habitat losses caused by land filling associated with port development and expansion of the Port of Los Angeles. Batiquitos Lagoon is located near the city of Carlsbad in San Diego County ([Item 39, September 23, 1987](#)).

The Batiquitos Lagoon Enhancement Project was undertaken as mitigation for the loss of deep water fish habitat due to channel improvements and placement of fill for cargo terminals at the Port of Los Angeles. As part of that Agreement, compliance with the California Environmental Quality Act (CEQA)/National Environmental Policy Act (NEPA) was required and a Final Environmental Impact Report/Statement was prepared for the Batiquitos Lagoon Enhancement Project (State Clearinghouse [SCH] No. 88080328) and approved by the City of Carlsbad and U.S. Army Corps of Engineers in 1990.

STAFF REPORT NO. **C104** (CONT'D)

On December 7, 1996, after 7 years of planning, nearly 3 years of construction, and total expenditures of \$55 million by the Port of Los Angeles, the Lagoon was dredged, least tern nesting sites were created, and the mouth of Batiquitos Lagoon was permanently opened. Pursuant to the Agreement, the CDFW assumed management responsibilities for the Batiquitos Lagoon Enhancement Project. The Commission leased its interest in Batiquitos Lagoon to the CDFW for management as part of the Batiquitos Lagoon Ecological Reserve ([Item C15, September 14, 1988](#)).

The restoration of Batiquitos Lagoon has been a success. Numerous species of marine fish use the Lagoon for shelter, feeding, and as a nursery. Habitats and communities that had not been seen in the Lagoon for years appear to be thriving. In addition, many species of birds, including special-status species, use the Lagoon for foraging and nesting.

The Batiquitos Lagoon Enhancement Project includes routine dredging to maintain tidal prism, salt marsh and marine fish nursery habitat within the Batiquitos Lagoon Ecological Reserve. The Commission previously approved maintenance dredging in the Batiquitos Lagoon on October 22, 2009 ([Item C52, October 22, 2009](#)).

PROPOSED ACTIVITY:

The Parties propose to enter into agreements for the administration of a contract for the maintenance dredging of the Batiquitos Lagoon, and the transfer and receipt of funds to administer the contract and reimburse staff time.

Staff would solicit proposals and execute a Public Works contract for the maintenance dredging because the cost of the proposed dredge exceeds the CDFW contract authority for Public Works projects; the Commission owns the majority of the land leased to CDFW and is one of the signatory agencies of the Project; and the Commission has the contract authority and experience in contracting for large scale dredging projects such as that just completed at Bolsa Chica. An interagency agreement between the Commission and the CDFW would be executed to facilitate the transfer of funds to the Commission.

Staff would place the funds in an interest-bearing account within the Kapiloff Land Bank fund pursuant to Public Resources Code section 8625, subdivision (b) for disbursement as needed to pay contractors and recover Commission staff costs as authorized by section 8613, subdivision (b).

The dredge project proposes to remove approximately 180,000 cubic yards of sand from the lagoon and place it on the Carlsbad South Ponto State Beach, at

STAFF REPORT NO. **C104** (CONT'D)

a cost of \$1,500,000. Dredging would take place beginning in the fall of 2018 with work concluding in February of 2019.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6106 (Delegation to execute written instruments), 6306.1, 8613 & 8625; Public Contract Code sections 1101 & 10108; State Contracting Manual Chapter 10 (Rev. 6/17).

Public Trust and State's Best Interests Analysis:

The proposed dredging is required to maintain the ecological values for the continued success of the Batiquitos Lagoon Ecological Reserve, which preserves and enhances Public Trust resources in the lagoon. Preservation of land for scientific study, open space, and wildlife habitat is consistent with the Public Trust Doctrine. Further, staff believes the proposed activity will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed activity; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction; and Strategy 3.1 to foster, improve, and enhance relationships to engage the Legislature, public, local, state and federal agencies, legislative grantees, Commission lessees, potential applicants, non-governmental organizations, and the regulated community.
2. Authorization to solicit proposals, execution of an interagency agreement, and acceptance of funds as trustee of the Kapiloff Land Bank Fund are not projects as defined by CEQA because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. The CDFW, acting as the lead agency under the provisions of CEQA, determined that the maintenance dredging, as described above, was categorically exempt from CEQA pursuant to California Code of Regulations, title 14, section 15304, under Class 4, Minor Alterations to Land. CDFW filed a Notice of Exemption with the State Clearinghouse on January 31, 2017 (SCH No. 2017018454). Staff concurs with CDFW's determination.

STAFF REPORT NO. **C104** (CONT'D)

Staff recommends that the Commission also find that this activity is exempt under Class 4, Minor Alterations to Land; California Code of Regulations, title 14, section 15304.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15304.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the maintenance dredging is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 4, Minor Alterations to Land; California Code of Regulations, title 2, section 15304.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the maintenance dredging, agreement to recover costs, and use of the Kapiloff Land Bank Fund to facilitate maintenance dredging will enhance Public Trust resources in the Batiquitos Lagoon and is in the State's best interests.

AUTHORIZATION:

1. Authorize the Executive Officer or her designee to solicit proposals for contractor services, negotiate fair and reasonable price, and award and execute a Public Works agreement for maintenance dredging of the Batiquitos Lagoon, PCC § 1101 and 10108.
2. Authorize the executive officer or her designee to enter into an agreement with the California Department of Fish and Wildlife to recover staff costs incurred in contracting for services to perform maintenance dredging at Batiquitos Lagoon.
3. As Trustee of the Kapiloff Land Bank Fund, authorize staff to accept and expend funds for the purposes of conducting maintenance dredging at the Batiquitos Lagoon and recovering staff expenses.
4. Authorize the Executive Officer or her designee to take whatever action is necessary and appropriate to implement the terms of the agreements described in paragraphs 1 and 2, thereof.